4. When forest lands have to be given free of the rent for railway purposes, the claim of the Forest Department to compensation is inadmissible, but when rent has been paid for forest lands made over to Railways, the Forest Department should be credited with the amount so realized. (G. R. No. 6586, dated 24th September 1891.)

5. The practice of exchanging receipts between the Revenue and the Railway authorities when land is made over to the latter should be continued. (G. R. No. 6702, dated 20th August 1892.)

6. (1) In supersession of all previous orders on the subject, the subjoined rules should be strictly observed in future on all railways in India, whether constructed by the State, or by companies (guaranteed, assisted or private), for which land is acquired under the orders of Government.

(2). It will be incumbent on Consulting Engineers to endeavour to avoid the emplacement of the railway line upon land, the acquisition of which will entail either unnecessary expenditure on Government, or annoyance to the owners, if the object sought can be equally well attained by a slight alteration of the alignment, or in some other manner. The Consulting Engineers and the local revenue officers are responsible that, in taking up land, the fullest consideration is given both to the convenience of the proprietors and to the interests of Government.

Rules relating to Land.

Classification of Railway Land—

I.—Railways constructed by Government.

(1). On Railways constructed by Government land is divided into two classes, *viz.* :—

I.—Permanent Land.

II.—Temporary Land.

(2). *Permanent Land.*—Land which will be required permanently after the Railway is open for traffic and the work of construction is complete. Under this head will be included all land to be occupied by the formation of the permanent line of Railway, with side-slopes of banks and cuttings, and the berms connected therewith; the entrances to tunnels and shafts belonging to the same; the sites of bridges and protection or training works; station-yards; landing places for Railway ferries; ground to be occupied by works belonging to the Railway, such as gas-works, arrangements for water-supply, &c.; ground for the storage, manufacture, or acquisition of materials; land for cemeteries, plantations, gardens, and recreation grounds; sites for permanent stations, offices, workshops, dwelling-houses and other buildings required for the purposes of the Railway, or the accommodation of the staff

with the grounds, yards, roads, &c., appertaining thereto.

Under this head will also be classed land which will be permanently occupied by the diversion of roads or rivers, or for other works undertaken for public purposes incidental to the construction of the Railway, although such land will cease to be held by the Railway authorities on the completion of the works.

(3). *Temporary Land.*—All land which is required for temporary purposes only, and which is relinquished after the work of construction is complete.

II.—Railways constructed by Companies.*

(4). On Railways constructed by Companies land is divided into four classes, *viz.*:—

I.—'*Class A*' *land.*
II.—'*Class B*' *land.*
III.—'*Class C*' *land.*
IV.—'*Class D*' *land.*

(5). '*Class A*' *Land.*—Land which the Company receives *for permanent occupation* free of charge under its contract or other arrangement with Government. Under this head is included all land required for the permanent works of the Railway, including the formation of the line with its side-slopes, berms, bridges, &c., and for all stations, workshops, permanent store-houses, and the like, necessary for the line when opened, and which, under the contract or other arrangement, is to be provided by Government free of cost to the Railway Company. The occupation of this land by the Company will be so far permanent that it will cease only when the contract is terminated or surrendered and the whole lapses to Government.

(6). '*Class B*' *Land.*—Land which the Railway Company receives *for temporary occupation* free of charge under its contract or other arrangement with Government. Under this head is included all land essential for the execution of the permanent works of the Railway, but not required after the completion of the line in part or whole. Such is land for spoil-banks, for extra excavation to make banks and for the storage of material held in stock by the Railway Company pending the construction of the line or their despatch to the works.

(7). '*Class C*' *Land.*—Land which the Railway Company has to provide at its own cost. Under

*The classification given here would apply *fully* only in the case of a Railway for which land was taken up on terms similar to those adopted for the old Guaranteed Companies. The conditions under which land is occupied by other Railway Companies in India vary according to the terms of their respective contracts (or other arrangements) and are in some cases practically the same as specified above for Railways constructed by Government. For the exact text of the rules laid down for the old Guaranteed Companies, see reprint of Government of India, P. W. Department, Circular No. 55, dated 29th June 1861, given as Appendix C.

this head is included land which is required for the provision or preparation of materials, for purposes contingent on the actual execution of the works on the line, or for other miscellaneous objects, which the Government recognises as falling legitimately within the scope of the Railway Company's operations, though not giving the Company a claim to the provision of land free of charge. 'Class C' land will be taken up by Government and handed over to the Railway Company for occupation at a fixed rental.

(8). *'Class D' Land.*—Land which, being required in consequence of the works of a Railway, still does not come directly into the occupation of the Railway Company at all. Under this head is classed land required *outside* the Company's boundary, for the diversion of road or rivers, and for the construction of roads, which are made for public purposes and which will not afterwards be maintained by the Company. 'Class D' land will be provided by Government free of charge.

Amount of land required—

(9). In estimating for the amount of land to be taken up for a Railway, care should be taken to make provision not only for the land which will be required permanently for the purposes of the open line (such as those indicated on page 917 under 'Permanent Land'), but also for such land as will be required during construction only, for spoil-banks, side-cuttings, quarries, stacking and preparation of material, temporary offices, workshops and quarters, and for temporary purposes generally, to be relinquished after the work is complete.

(10). Land is everywhere (except under the special sanction of the Government of India previously obtained) to be provided of a width sufficient to allow of the line being doubled. For this purpose the *minimum* width required for the 'Permanent land' (in the case of a Railway constructed by Government) or 'Class A land' (in the case of a Railway constructed by a Company) under ordinary circumstances is as follows* both for the 5 ft. 6 in. and for the metre guage:—

Embankment	...	70 feet + 2 slopes.
Cutting ...	...	76 feet + 2 slopes.

(11). It is to be remembered that the width here specified is, in each case, the *minimum*, and that it may frequently be necessary to arrange for extra land, which will be required *after the line is open*,

* For details see sections showing widths of land to be taken up, Appendix A (not printed). The ditch shown on these sections need not be dug, unless required; but whether the ditch is required or not, a width of *not less* than 24 feet must in every case be preserved from toe of slope to edge of side-cutting, or from edge of cutting to foot of spoil-bank.

Land for a Railway on the metre gauge should ordinarily be taken up of the full width required for the 5 ft. 6 in. gauge, as specified above. In special cases, however, where it may be considered as practically certain that the Railway will, at no future time, be converted to the 5 ft. 6 in. gauge, the width given in the diagram for metre gauge may be worked to.

for repairs to embankments, for stacking material, or for other purposes. Land so provided would be *additional* to the minimum permanent land shown on the diagram, and during the construction of the line should be reserved and kept free from excavation or spoil.

(12). At station-yards the cutting or filling for the formation of the main line and sidings may sometimes be arranged for in the general levelling and improvement of the plot of ground to be permanently acquired. Where this cannot be done, provision should be made *outside* the proposed boundary of the station-yard for such additional land as may be required for side-cuttings or spoil-banks.

(13). Where a piece of ground is to be reserved for a plantation or other similar purpose, care should be taken that proper arrangements are made for sufficient land, outside and distinct from such piece of ground, for the side-cuttings or spoil-banks which may have to be provided for.

(14). In making provision for land for side-cuttings, the width will, under ordinary circumstances, depend upon the nature of the soil, height of bank, facilities for getting earth, and other local conditions. Under special circumstances, as, for example, in the neighbourhood of large towns or where land is unusually expensive, it may be advisable to equalize the quantities for cutting and filling, and take the material for banks from the adjacent cuttings.

General arrangement, side-widths, &c.—

(15). For the line between stations, the general arrangements shown on the sections,—Appendix A (not printed)—is to be followed, and the side-widths set out accordingly.

(16). Where practicable, for low banks or shallow cuttings, the land taken up for side-cuttings or spoil-banks should be on one side of the line only.

(17). In setting out land for side-cuttings arrangements should be made for berms at suitable intervals to allow convenient access to the line during construction, and to prevent the side-cuttings ultimately developing into water-courses alongside the embankment. A width of 40 feet in a length of 200 feet is generally suitable for this purpose; that is to say, each excavation would be 160 feet long, and separated from the next excavation by an interval of 40 feet of undisturbed earth.

(18). In setting out land for spoil-banks, care should be taken to leave sufficient space for arrangements for drainage and for catch-water drains, where required, to prevent surface water from the adjacent land running down the slopes of the cutting.

(19). The sides of spoil-banks and side-cuttings, next the line, are to be sloped off (as shown on the sections, Appendix A (not printed), before the earth-work is finished, and in setting out side-widths.

the distance allowed to the nearest part of the excavation or spoil must be such as to preserve the specified width of strip of clear unbroken ground *after* this sloping has been carried out.

(20). In arranging the side-widths, the line for the fencing and for the inner edge of side-cutting or spoil should be continued straight in portions as long as practicable. That is to say, these lines should follow the *average* variation in height of bank or depth of cutting over considerable lengths, not to be made to zig-zag to suit the local variation at each chain peg. Where the variation in side-widths would be comparatively unimportant, it will often be advisable to neglect such local variations entirely, and take up the land in a parallel strip for some distance.

Plans to be made—

(21). To enable the Civil authorities to take action for the acquisition of land required for Railway purposes, it is necessary* that proper plans should be made for reference by all concerned.

(22). The scale for these Land Plans should, under ordinary circumstances, be 400 feet to 1 inch; but where this would not admit of sufficient detail being shown with clearness, the scale should be 100 feet to 1 inch.

(23). The data for the preparation of the Land Plans should generally be obtained during the progress of the survey for the location of the line, and the general instructions for the preparation of plans to accompany a project for a Railway, when submitted to the Government of India, are to be held to apply also to plans required for the acquisition of the land necessary for the construction of the Railway.†

(24). The following *additional* information is to be supplied on the Land Plans:—

(*a*) In the case of a Railway constructed by Government, or by a Company under the terms of whose contract land is divided into two classes, 'permanent' and 'temporary,' the plans made out for the first acquisition of the land will show the outer boundary line; and all land, for whatever purpose it may be required, will be taken up as for permanent occupation. This land will be distinguished on the Land Plans by being coloured pink.

N. B.—This rule applies only to the copies of the plans made for the Civil authorities for use on the acquisition of the land, and is not intended to prevent Engineers from marking on their office copies the intended disposition of the land as 'permanent' and 'temporary,' or any other information which may be found convenient for use during construction or for the purpose of the estimate.

As early as practicable, after the line is opened, and it is known definitely what land can con-

* See Land Acquisition Act 1870[a], Sections 6 and 8.

† See Rules for the preparation of Railway Projects.

[a] Now Act I of 1894.

veniently be relinquished, the original plans will be corrected (or fresh plans made), showing the boundaries of the land required for permanent occupation ('Permanent Land'), and also those of the land to be relinquished ('Temporary Land'). On these latter Land Plans, the two classes of land are to be distinguished by colour as follows:—

Permanent Land—Pink.

Temporary Land—Yellow.

(*b*) In the case of a Railway constructed by a Company, by the terms of whose contract (or other arrangement with Government) land has to be taken up under special classes A, B, C and D, as defined on page 918 of these rules, or under other conditions of a like nature, the plans made out for the first acquisition of the land will show clearly the boundaries of the land to be taken up under *each* of these classes.

As early as practicable, after the line is opened, the original plans will be corrected (or fresh plans made), showing the disposition of the land as determined after the work of construction is completed.

On these Land Plans, the four classes of land are to be distinguished by colour as follows:—

Class A. Land—Pink.

Class B Land—Yellow.

Class C Land—Purple.

Class D Land—Green.

(*c*) Detached portions of land should be referred to some fixed point on one of the main sheets with distances and compass or other bearings, or such reference to the published maps of the neighbourhood as will ensure a ready identification of the land. A corresponding entry should in each case be made on the nearest main sheet to draw attention to the detached plot.

(*d*) On all Land Plans, whether made out under clause (*a*) or under clause (*b*), the position of the boundary of each class of land is to be determined by dimensions written on the plan; these dimensions to be sufficiently complete to enable such boundaries to be, at any time, readily ascertained or verified.

(*e*) The names of villages to which the land belongs are, in each case, to be written on the plan alongside of the line indicating the village boundary. If the boundary line crosses the Railway line, the names are to be repeated on the other side of the Railway line, and the chainage of the crossing point noted.

(*f*) When boundary marks have been erected for the demarcation of the land occupied by the Railway, the position and corresponding

number of each detached boundary mark is to be shown on the Land Plans.

(25). The Land Plans are to be made up in sets for continuous portions of land, each set being complete for a revenue district or charge of a Collector or Deputy Commissioner (or length of Native State). On each end sheet (first and last) of every set of Land Plans, a sufficient portion of the continuation sheet of the next set should be repeated, to enable the two sheets to be connected or traced together, if required. For each set of Land Plans the sheets are to be numbered consecutively throughout, and the name of the Civil district (or Native State) to which the set belongs, is to be marked conspicuously on *each* sheet.

(26). For a Railway constructed by Government, the minimum number of sets of Land Plans required is two, *viz.*, one for the Civil authorities and one for the Railway. For a Railway constructed by a Company, the minimum number of sets of Land Plans required is three, *viz.*, one for the Civil authorities, one for the Railway, and one for the Consulting Engineer.

(27). Each set of Land Plans is to be signed by the officer immediately responsible for its preparation, and by the Chief Engineer of the Railway. In the case of land required for a line already opened, the Manager will also countersign the plans before sending them on.

(28). Land Plans are to be kept up to date either by adding to the existing plans or substituting new sheets as may be necessary. Each such addition or alteration is to be carefully checked by the officer in immediate charge of that portion of the Railway, and attested by his signature. It is to be understood that the Land Plans at any date must show a clear and accurate record of the land occupied by the Railway on that date.

(29). A complete series of Land Plans for the whole line is to be kept in the office of the Chief Engineer of the Railway.

Acquisition of Land—

(30). All arrangements for the acquisition of land required for the construction of Railway will be made by the local Civil officers.*

(31). To this end each Civil officer in charge of a district, in which land is required for Railway purposes, is to be furnished with particulars of such land, as follows:—

(*a*) A complete set of Land Plans prepared in accordance with the instructions given above.

(*b*) A complete set of Schedules prepared in the form given as Appendix B.

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* This rule is not intended to prevent preliminary enquiries regarding the probable cost of land being made by the Railway officers direct from the owners.

(32). On receipt of sanction for the construction of the Railway, a statement containing the following information should at once be sent to the Secretary to the Local Government or Administration, with a request that the notification required under Section 6 of the Land Acquisition Act of 1870* may be inserted in the local official Gazette, and that the district Civil officers concerned may be instructed to arrange for the transfer of the land required :—

1 of

(*a*) The name of the Railway.

(*b*) A copy of the order of Government sanctioning the construction of the Railway.

(*c*) A brief general description of the route to be followed by the Railway, with the names of the more important villages or towns through or near which it is intended that the Railway shall pass.

(*d*) A list of the Civil districts in which land will be required for the purposes of the Railway, with the approximate area in acres of the land required in each.

(*e*) For each Civil district the name or description of the place or places at which the Land Plans for that district will be available for inspection by the public.

(33). With the statement above specified should also be sent, for the information of the Local Government or Administration, a 'general index plan to a scale of 1 mile to 1 inch, showing the route to be followed by the Railway.†

(34). On receipt of the information specified above, the Local Government or Administration will publish in the local official Gazette the notification required under the provisions of Section 6 of the Land Acquisition Act of 1870,‡ together with such statements as may be considered advisable under Section 3, clause 1, of the Land Acquisition (Mines) Act of 1885, and will instruct the local Civil officers to arrange for the acquisition of the land required, and its transfer to the Railway.

of

(35). When orders are received for the construction of the Railway, the land required should be properly marked out, unless this has already been done.

(36). Except so far as may be necessary for the proper survey or marking out of the land required, work must not be commenced or damage done, materials deposited, or any excavation or demolition put in hand until the land has been formally made over, or unless approval in writing has been obtained from the local Civil authorities.

(37). Where land required for Railway purposes forms part of a cantonment or camping ground, the Military authorities in the Quarter-Master General's

† This index plan should be prepared in accordance with the instructions given on page 10 of the Rules for the preparation of Railway Projects under the head 'Index Plan and Section.'

Department should be consulted before steps are taken for the acquisition of such land. *

* *Vide* also G. R. No. 1978, dated 16th March 1893, entry 26, Part I.

(38). In the case of a Railway to be constructed by a Company, all arrangements with the Civil authorities (or with the Political officer for Native States) for the acquisition of the land required will be made through the Consulting Engineer, who will be responsible that the proper procedure is followed, and that the Land Plans and Schedules are drawn up in accordance with these rules. All such Land Plans and Schedules will be furnished by the Company to the Consulting Engineer in triplicate. The Consulting Engineer will countersign all three copies, and will then return one set to the Company and forward a second set to the Civil authorities, retaining the third set for record in his office.

Valuation and Payment –

(39). The valuation of the land and assessment of all claims and payment for the same will be made by the Civil authorities.†

(40). All land for Railway purposes, whether required temporarily or permanently, will be taken up in the first instance as for permanent occupation, and valued accordingly. It is to be understood that the distinction between 'Permanent' and 'Temporary' land or 'Class A' and 'Class B' land, is merely of the nature of a forecast showing what the disposition of the land will probably be on completion of the work.

(41). In the case of a Railway constructed by Government, or by a Company under the terms of whose contract land is divided into two classes 'Permanent' and 'Temporary,' the Railway will, in the first instance, be debited with the full cost of all land which may be acquired, and will afterwards be credited with the amount realised by the sale of such land as may be relinquished.

(42). In the case of a Railway constructed by a Company, by the terms of whose contract (or other arrangement with Government) land has to be taken up under special Classes A, B, C and D, as defined on pages 918—919, or under other conditions of a like nature, 'Class C' land will be acquired by Government and leased to the Company, the rent being fixed at 5 per cent. on the cost of the land, *plus* any Government revenue with which the land may be chargeable. An annual settlement of accounts connected with the re-sale of 'Class C'

† The procedure to be adopted by the Civil authorities and Accounts officers in connection with this work is laid down in Government of India, Financial Department, Resolution No. 1580, dated 29th June 1886(1).

(1) Superseded by G. I., F & C., Resolution No. 2209A., dated 10th May 1895 (G. R. No. 4320, dated 10th June 1895, as amended by G.Rs.No. 755, dated 24th January 1896, No. 6950, dated 4th September 1896, and No. 237, dated 12th January 1897—*vide* entry 31, Section I *supra*)

lands will be made between Government and the Company; the Company bearing any loss owing to diminished value and being credited with any gain arising from enhanced value.* Houses, trees, tanks, or other property, on land which is not provided free of charge, and for which special payment or compensation is necessary, will be paid for at once by the Railway Company. In the case of land provided free of charge, the materials, etc., derived from the 'clearance' of the surface (which then will be at the expense of Government), will be disposed of by the Revenue officers to the best advantage.

Land Relinquished—

(43). Land having been occupied for the purposes of a Railway, should, when no longer required, be made over to the local Civil authorities, who will arrange for its disposal.

Dealings with Native States—

(44). For land required in Native States the procedure laid down in these rules is to be adopted as far as applicable in every respect, the arrangements being made through the Political Officer.—(*See also Appendix F.*)

Demarcation of Land—

(45). The following rules for the demarcation of land have been laid down by the Government of India under Section 13 (*a*) of the Indian Railways Act of 1890 †:—

(*a*) All land permanently occupied for the purposes of a Railway shall have its boundaries defined on the ground in such a manner as to enable such boundaries to be readily ascertained and identified.

(*b*) For this purpose the boundary of the Railway land may be defined by a continuous wall, fence, or ditch, or by detached marks, posts, or pillars.

(*c*) Where the boundary mark is continuous, the boundary of the Railway land is to be on the outer edge of the wall, fence, or ditch; that is to say, the wall, fence, or ditch will be situated wholly on Railway land.

(*d*) Where detached marks, such as isolated posts or pillars, are used, the boundary of the Railway land will pass through the centres of such marks. Between the marks the boundary will in each case be taken in a straight line from the centre of one mark to the centre of the next mark.

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* This rule came into force in 1877, and does not apply to land for which, under the previous rules, an enhanced rent had been paid to allow for deterioration (*see Govt. of India, P. W. Dept., Resolution No. 3755—60 R., dated 16th October 1877.*)

† See Govt. of India, P. W. Dept., Circular No. XIV R., dated 6th August 1890.

(*e*) Detached marks are in no case to be at a greater distance apart (centre to centre) than one-eighth of a mile (660 feet). They are to be of a substantial character, not easily destroyed or moved by accident or mischief, and are to be of such size and form as to be readily found and recognized.

(*f*) Each detached boundary mark is to bear a number, and the position and corresponding number of each detached boundary mark is to be shown on the land plan.

(*g*) Where a fence, wall, or ditch is for convenience situated at some distance within the boundary, and does not mark the actual limit of the Railway land, it will be necessary that, in addition to such fence, wall, or ditch, the actual boundary of the Railway land shall be properly marked, and defined in accordance with these rules.

(46). In the case of a Railway constructed by a Company, the expression 'land permanently occupied' is intended to include not only 'Class A' land, but also such 'Class B' and 'Class C' land as may be required for a considerable period. In the event of any 'Class B' or 'Class C' land enclosed by the boundary being afterwards relinquished, the boundary is to be shifted to mark the new limit

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Appendix A.—(*Not printed*).

Appendix B.—Form of Schedule for Land Acquisition.

(For a Railway to be constructed by a Guaranteed Company or by a Company under similar conditions.)

Banda District.
Bilaspur Tahsil.

GONDA-AZIMGARH RAILWAY.

AZIMGARH SECTION.

Schedule showing land required for Railway purposes in the Bilaspur Tahsil of the Banda District.

NAME OF VILLAGE—MANDWAL.

Reference to Plan.		Purpose for which the Land is occupied.	Area of land required.			
Set.	Sheet.		Class A (*Pink*).	Class B (*Yellow*).	Class C (*Purple*).	Class D (*Green*).
			Acres.	Acres.	Acres.	Acres.
Set C.—Banda District.	3	Main line from chainage 36,627 to chainage 38,990, land to be permanently occupied.	4·6663	...	...	...
	3	Same length for side-cuttings.	...	3·130	...	...

Reference to Plan.		Purpose for which the land is occupied.	Area of land required.			
Set.	Sheet.		Class A (*Pink*).	Class B (*Yellow*).	Class C (*Purple*).	Class D (*Green*).
			Acres.	Acres.	Acres.	Acres.
Set C—Banda District—*continued.*	3	Extra land for stacking material, &c., at site of Bridge No. 57.	...	9·5500	...	...
	4	Mandwal Station-yard ...	28·6961	...	...	...
	4	Approach road to Mandwal Station.	...	...	...	·7548
	4	Site for temporary House and Office for Assistant Engineer.	...	5·5096	...	...
	5	Brick-field to north of line opposite chainage 42,350.	...	...	11·2163	...
	6	Main line from chainage 41,440 to chainage 42,728, land to be permanently occupied	2·4389	...	...	...
	6	Same length for side-cuttings.	...	1·5243	...	...
		Totals ...	35·8313	19·7148	11·2163	2·7548

Azimgarh,
17th. September 1891.

District Engineer

Consg. Engineer.

Chief Engineer.

Appendix B.—Form of Schedule for Land Acquisition.

(For a Railway to be constructed by Government or by a Company under similar conditions.)

Banda District.
Bilaspur Tahsil.

GONDA-AZIMGARH RAILWAY.

AZIMGARH SECTION.

Schedule showing land required for Railway purposes in the Bilaspur Tahsil of the Banda District.

NAME OF VILLAGE—MANDWAL.

Reference to Plan.		Purpose for which the land is occupied.	Area of land required. (*Pink*).
Set.	Sheet.		
			Acres.
Set C—Banda District.	3	Main line from chainage 36,627 to chainage 38,900, land to be permanently occupied ...	4·6933
	3	Same length for side cuttings	3·1309
	3	Extra land for stacking material, &c., at site of Bridge No. 57	9·5500

Reference to Plan.		Purpose for which the land is occupied.	Area of land required. (*Pink*).
Set.	Sheet.		
			Acres.
Set C—Banda District—*continued.*	4	Mandwal Station-yard...	28·6961
	4	Approach road to Mandwal Station	2·7548
	4	Site for temporary House and Office for Assistant Engineer	5·5096
	5	Brick-field to north of line opposite chainage 42,350	11·2163
	6	Main line from chainage 41,440 to chainage 42,728, land to be permanently occupied	2·4389
	6	Same length for side-cuttings...	1·5243
		Total ...	69·5172

Azimgarh,
17th September 1891.

Consg. Engr. (for Company's Ry.)

Executive Engineer.

Manager, (for open line State Railway).

Engr.-in-Chief.

Appendix C.

RULES LAID DOWN IN 1861 FOR THE ACQUISITION OF LAND REQUIRED FOR RAILWAY PURPOSES BY THE OLD GUARANTEED COMPANIES.

See Government of India, Public Works Department, Circular No. 55, dated 29th June 1861.

1. Land required for Railway purposes may be divided into four classes, A, B, C and D. First, Class A, land which a Railway Company receives free of charge, under the contract with the Government, for permanent occupation. Second, Class B, land also provided free of cost, but only for temporary occupation. Third, Class C, land which the Railway Company has to provide at its own cost. Fourth, Class D, land which does not come directly into the possession of the Railway Company at all.

2. Class A will comprise the land required for the permanent works of a Railway, including the road with its bridges, &c., and all stations, workshops, permanent storehouses and the like, necessary for the line when opened, and which under the contract is to be provided by Government free of cost to the Railway Companies. The occupation of this land by a Railway Company will be so far permanent that it will only cease when their contract is terminated or surrendered and the whole lapses to Government. It is all provided free of charge.

3. Class B will contain land essential for the execution of the permanent works of a Railway, but not required after the completion of the line in part or in whole. It also is provided free of charge; such is land for spoil-banks, for extra excavation to make banks, for river diversion, and

for the storage of Railway material held in stock by the Railway Company, pending the construction of the line, or their despatch to the works.* The occupation of this class of land will be temporary. On its restoration to the Government—the proper time for which will be settled in each case between the Railway officers and the Consulting Engineer—it will be for the Revenue officers to dispose of it to the best advantage of Government.

* This last sort of land is allowed free under the Right Honourable the Secretary of State's letter No. 25 of 30th November 1858.

4. Class C will contain the land which a Railway Company has to provide at its own cost. This is land which is required for the provision or preparation of materials; for purposes contingent on the actual execution of works on the line, or for other miscellaneous objects which the Government recognizes as falling legitimately within the scope of the Railway Company's operations, though not giving the Company a claim to the provision of land free of charge. As a Railway Company is bound to pay for the construction of all works out of the capital, receiving only from Government, without charge, the land on which the works stand, the provision of all materials, and the means of facilitating the execution of all works, are to be at the cost of the Railway Company (a). It is proper to bear in mind, in fixing the rent, that this land will in part deteriorate by the use to which it is put, and in part will not so deteriorate. In all cases, however, it will be most convenient to deal with the land, in the first instance, in the same manner. It will be taken possession of by Government, and handed over to the Railway Company for occupation at a fair rental. When the necessity for occupation ceases, the land will be given up again to Government by the Railway Company, the proper time for this being determined, as under Class B, by the Railway officers and Consulting Engineers.

5. Class D will contain that land which, being required in consequence of the works of a Railway, still does not come directly into the occupation of the Railway Company; it will be provided free of charge. It will be exclusively land for roads; either new roads leading to railway stations, or to permanent store-yards or workshops detached from the main works, or diversions or changes of old roads made necessary by railway works.

6. Inconvenience is likely to arise if Railway Companies are permitted to hold land, on their own account, or otherwise than is above explained. By causing them to rent from the Government all land to which they are not entitled free, in the manner above explained, simplicity in the tenure of

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(a) The following words were also in the original rules:—

"In this class, therefore, will fall all land for brick-making, for quarrying ballast,[1] for houses for persons employed on the work, &c. So also land for houses for engine-drivers, and the like, on the line when opened, and for other similar purposes, will come under Class C."

But Her Majesty's Secretary of State for India thought that any particularization in the rule might raise questions as to the power of Government to alter or vary the terms of the contract (a power which the Government has no intention of claiming). It has therefore been thought best to give these words in a note simply for the guidance of the officers of Government and parties interested, as to the construction which Government puts on the contract in regard to certain points of frequent practical application.

[1] In the original rules the words "for roads to works in progress" here found place. They have now been struck out as calculated to mislead. It is clear a road may be required from a site used temporarily for storage of materials itself in Class B. This would carry the road itself into the same class. A road from a brick-field or quarry would be in the same category as the brick-field or quarry, *viz.*, Class C. Whereas a road from a detached but permanent store-yard, although leading "to works in progress," would not the less come under Class D, should such road still be necessary after the completion of those particular works. Thus, *generally*, the circumstances of the tenure of land *at the end of the road furthest from the Railway* will decide the class into which the road itself shall be placed.

their property will be secured, which will be a matter of importance at a future time when the Railway may be transferred to Government. The determination of the value to be paid by the Government for any land not included in Class A, which might be held by a Railway Company, would certainly be, in such event, a great embarrassment.

7. Houses, trees, tanks, or other property on land, which is not provided free of charge, and for which special payment or compensation is necessary, will be paid for at once by the Railway Company. In the cases of land provided free of charge, the materials, &c., derived from the "clearance" of the surface, which then will be at the expense of Government, will be disposed of by the Revenue officers to the best advantage.

8. All land required for a line of Railway will be applied for in continuous portions: the plans will be drawn to a scale of 150 feet to the inch, and the measurements and areas will be recorded in accordance with the fiscal divisions of village estates or mouzahs, parganas, and zillahs, in a schedule, of which a form is annexed, showing in detail the several classes to which the land belongs.

9. The several classes of land will be coloured pink, yellow, purple, and green, respectively, in the plans, and the exact purpose to which each parcel of land is to be devoted will be noticed in the schedule.

10. Detached portions of land should be referred to some fixed point on one of the main sheets, with such distances and compass or other bearings as will enable the land to be identified at once. A corresponding entry should also be made on the main sheet to draw attention to the detached portion.

11. The general correctness of the plans and schedules of the Railway Engineers being attested by the Consulting Engineers to Government, the applications will be forwarded to and dealt with, as may be necessary, by the Revenue authorities under the orders of the Local Government. The Revenue officers are to be held strictly responsible for the regular adjustment by Railway Companies of all charges on account of land, to be determined in the manner above explained.

12. A complete set of Land Plans should be recorded in the Chief Engineer's Office of each Railway, and a copy forwarded to the Consulting Engineer to Government, by whom a duplicate will be given to the Revenue Board, which, in turn, will supply Collectors of districts with transcripts of parts included in their respective zillahs. When it may be found expedient, in order to expedite the making over of the land, to employ a special Land Commissioner for this duty, the Railway Engineers should supply an additional copy of the Land Plan for the use of the Land Commissioner.

13. The Consulting Engineer to Government and the local Revenue authorities will, respectively, be held responsible for the punctual fulfilment of the foregoing orders in their several departments, and for the careful record of plans in their respective offices.

14. All contemplated changes in the land in possession of a Railway Company should be promptly reported by the Railway Agent to the Consulting Engineer to Government, who will notify the same to the Local Government. It will be for the latter to see that the necessary steps are taken by the Revenue authorities for entering such changes in their records, and for carrying out all further proceedings that are requisite on such an occurrence.

15. It will be necessary for the Local Government to see that a correct register and record of title of all Railway

lands is maintained; for the whole of such lands will one day revert to the Crown: also that all rents or payment for clearances, &c., chargeable in behalf of Government against the Railway Company, are duly realized.

16. It is essential that there should be for each Railway *one* set of plans, in a regular sequence, to show all the land; and that the plans of each Railway Company's estate, after they have once been prepared, should constantly be corrected and always be maintained complete.

AMENDMENT OF RULES RELATING TO ADJUSTMENT OF ACCOUNTS CONNECTED WITH "C CLASS" LANDS.*

SEE GOVERNMENT OF INDIA, PUBLIC WORKS DEPARTMENT RESOLUTION NOS. 3755—60 R., DATED 16TH OCTOBER 1877.

I am directed to acknowledge the receipt of your letters Nos. 4645 and 4646, dated the 22nd December 1871, on the subject of the adjustment of the rent and sale-proceeds of Railway class C lands, and to say that the Governor General in Council concurs in the proposals contained in your letter to the Board of Revenue, No. 3976, dated 14th October 1871, *viz.*, that an annual settlement should be made with Railway Companies of all accounts connected with the re-sale of C lands, the net loss being charged against the Companies, on condition that this rule shall apply to the case of all lands re-sold whenever they may have been taken up, unless (under paragraph 5 of the Public Works Department Circular No. 55 of 1861) a specially high rent has been charged to meet the probable loss by deterioration. The rent of C lands will in future be in all cases fixed at the rate of 5 per cent. on the capital expended, *plus* any Government revenue with which the land may be chargeable.

Appendix D.

LAND REQUIRED FOR DWELLING-HOUSES FOR EMPLOYE'S OF A RAILWAY COMPANY TO BE PAID FOR AS UNDER 'CLASS C.'

Government of India, Public Works Department, Circular No. 16, dated 6th April 1861.

The following extract of orders, passed by the Governor General in Council on a reference from Madras, is circulated for guidance in cases where application may be made by Railway officers for land to build dwelling-houses on, or where the Railway officers propose to build such dwelling-houses on land provided at the cost of the State. It will be seen that, whatever may have been admitted in some such cases hitherto, no claim should in future be recognized for the provision of land for such dwelling-houses at the cost of the State.

Extract from letter to Secretary to Government of Madras.

"I am directed to state in reply that the Government of India cannot admit that dwelling-houses for Engine Drivers or Station Masters, and still less for general workmen, are 'conveniences' under terms of the contract. This sort of accommodation being given or refused is merely a question of wages."

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* This amends paragraph 4 of Public Works Department Circular No. 5 dated 29th June 1861, above.

Appendix E.

SPECIAL RULES ISSUED AFTER CONSIDERATION OF THE CONTRACT OF JANUARY 1880, ENTERED INTO BETWEEN THE SECRETARY OF STATE FOR INDIA IN COUNCIL AND THE EAST INDIAN RAILWAY COMPANY.

See Government of India, Public Works Department No. 534 R. C., dated 9th June 1885.

All distinctions as to classes of land in the possession of the East Indian Railway Company, that existed prior to the 1st of January 1880, shall cease from that date.

2. From and after the 1st January 1880, the East Indian Railway Company, when taking up land, shall pay the value of land, including cost of clearances and compensation, to owners and occupiers, *plus* the capitalised value of the abatement of land revenue and the expenditure necessary in the different processes required in the taking up of the land.

3. The capitalised value of the abatement of land revenue is the amount which, invested in 4 per cent. Government securities, at the market rate of the day, will produce interest equal to the abatement.

4. If the land required for the East Indian Railway Company be the property of the State, its value shall be the value as appraised by the Revenue authorities at the time of its transfer to the undertaking, inclusive of incidental expenditure.

5. All lands required under these rules shall be taken up through the principal Revenue officer of the district within which such lands are situated. If the land be the property of private individuals, payments shall be made for it to its owners in the manner described in Rules 4 and 5 of Chapter 6 of the Civil Account Code. If the land be the property of the State, the principal Revenue officer of the district aforesaid shall complete his valuation and award, and shall communicate the same to the Provincial Accountant General or Comptroller, as the case may be, for recovery from the East Indian Railway Company.

6. The amounts declared recoverable from the East Indian Railway Company in respect of lands taken up under these rules, shall be adjusted according to Rule 6, Chapter 62, of the Civil Account Code.

Appendix F.

PROCEDURE TO BE FOLLOWED IN THE ACQUISITION OF LAND IN NATIVE STATES REQUIRED FOR QUARRYING FOR THE PURPOSES OF A RAILWAY.

Government of India, Public Works Department, Circular No. XXVIII Railway, dated 7th November 1882.

It having been brought to the notice of His Excellency the Governor General in Council that it not unfrequently happens that local Railway officers obtain access to land in Native States for quarrying and other purposes of the like nature, without reference to the Native States concerned, and that the procedure often gives rise to misunderstandings as to the terms on which such land is to be held and used by the Railway, His Excellency in Council is pleased to direct that in future no quarry is to be opened outside the limits of the land made over to the Railway in any Native State, until the

permission of the Native State or Darbár concerned shall have been obtained by local Railway Officers through the Political officer attached to the State. In short, the procedure followed in connection with the acquisition of land in British territory should be observed, except that, instead of the land being acquired under the Land Acquisition Act. (*Act X of 1870*), it will have to be obtained through the Political officer on such terms as may be agreed upon with the Darbár after the submission of the necessary land plans.

(G. I., P. W. D, No. VI (Railway), dated 7th July 1892; *vide* G. R. No. 8379, dated 25th October 1892.)

7. (1) The scales for land plans laid down in paragraph 22 of the revised rules relating to the acquisition of land prescribed in Government of India Circular No. VI (Railway,) dated 7th July 1892, are intended to apply only to new branches or lines of Railway, and not to existing lines on which a different scale has been in force.

(2). Under the procedure laid down in paragraphs 30 to 38 of the revised rules referred to, all land should be acquired through the Civil authorities, with whom it rests to decide whether any land shall be acquired by negotiation, or whether the provisions of the Land Acquisition Act should be resorted to.

(3). All land plans should be countersigned by the Consulting Engineer after he has approved of the proposals for acquiring the land and before their transmission to the Civil authorities, *vide* paragraph 11 of Appendix C to the revised rules above quoted. All subsequent alterations in the plans that may have become necessary should also be duly authenticated in any convenient and sufficient way—*vide* paragraph 28 of the revised rules.

(4). The Government of Bombay have not considered it necessary hitherto to issue any notification under Section 4 of the Land Acquisition Act, to enable trial surveys to be undertaken, but the district Civil and Political officers have always been instructed to render any assistance in their power. Cases which have arisen in other parts of India have shown the expediency of conforming to the law, and of issuing notifications under Section 4 of the Act before entering upon lands for the purpose of surveys, &c., and without such notifications officers employed upon surveys or reconnaissances are liable to be treated as trespassers. At the same time the Government of India have no wish to interfere with the discretion of Local Governments in the matter.

(G. I., P. W. D., No. 629-R. C., dated 17th June 1893; *vide* G. R. No. 5405, dated 27th July 1893.)

8. The cost of all lands provided, whether for the temporary or permanent use of Railways, falls either immediately or ultimately on Government, and under these circumstances, the capitalization of the Local Fund Cess on such lands would amount to a bonus to Local Funds at the expense of public revenues, and is inadmissible on the principles laid down in Government Resolution No. 9094, dated 18th November 1884. (G. R. No. 7887, dated 26th October 1893.)

PART VI.—ACQUISITION OF LANDS IN NATIVE STATES.

1. (1) The following principles which are generally maintained by the Government of India in dealing with acquisitions of land from Native States, should be ordinarily followed in determining the form of compensation for lands acquired from such States:—

(2). If the work under construction is not only executed at the cost of British revenues, but is also directly beneficial to the Native State, as in the case of a Railway, the Government of India expect that the land will be given free of cost, together with full jurisdiction, both Civil and Criminal, over it. Where, however, the work will only benefit British subjects and where compensation must be paid for land acquired from a Native State it is a rule to pay for the value of the land in a lump sum, and not by exchange of other lands. In fixing the lump sum it is usual to calculate the value at twenty times the assessment which would be levied on similar lands in British territory. To this last rule there must necessarily be exceptions, but the principle of paying the value in a lump sum is one which it is desirable to maintain both for Financial and Political reasons.

(G. I., For. Dept., Nos. 1117-I., dated 9th April 1885, and 1289-T., dated 1st April 1888; *vide* G. Rs. Nos. 4149, dated 23rd May 1885, and 2402, dated 21st April 1888.)

2. Certain lands having been acquired in the jághir of a Native Chief for a public purpose, and the lump sum due by Government having been determined, the payment was commuted by the Local Government into a perpetual remission of a portion of the tribute payable by the Chief. In calculating the amount of remission, the annual value of the cash payment due by Government was estimated at 5 per cent. It was observed by the Government of India that in thus estimating the interest due by Government on the capital sum, and in commuting a lump payment into a perpetual charge on the Indian Revenues, the Local Government exercised an authority which required the sanction of the Government of India in the Financial Department. In addition to this it appeared to the Government of India that the proceedings of the Local Government involved also a modification of a Treaty payment which required a reference to the Foreign Department. (G. I., For. Dept., No. 1117-I., dated 9th April 1885; *vide* G. R. No. 4149, dated 23rd May 1885.)

PART VII.—COMPENSATION FOR INA'M AND MIRA'S LANDS, AND LANDS HELD UNDER SURVEY SETTLEMENT.

1. The principles upon which compensation should be offered for inám lands taken up for public purposes have been laid down in Government Resolution No. 4483*, dated 31st December 1858. It was not intended to give Inámdárs ten years' survey rental in addition to lands in exchange elsewhere; nor on the other hand would it have been just to treat the Inámdár occupant of his own land in the same manner as the Inámdár who has a right to the assessment only. (G. R. No. 1085, dated 17th March 1860.)

* Printed at page 375 of the Circular Orders of the Revenue Department, Bombay, 1860.

2. Holdings in inám are compensated by twenty years' purchase, including all rights. To give twenty years' compensation for mirás, which does not, like inám, convey the right to the assessment, seems unreasonable. On the other hand, to give holders in mirás twenty years' purchase, while holders of more than five years under the Survey Settlement receive only five years' purchase, is to raise the value of the former most unduly, and to depreciate the value of the latter most unfairly. The utmost that need be allowed to mirás holdings is fifteen years' purchase, and this should be the rule in future settlements. With regard to holders under the Survey Settlement it has been decided by the Resolution of 31st December 1858 that the offer should vary from 5 to 10 years, but on reconsideration the correctness of the principle on which the Resolution was passed is open to question, for, as the survey leases are renewable, a man's claim becomes greater the longer he occupies; and as improvements such as wells, &c., are compensated for separately, the length of occupancy should rather be taken as a test according to which the rate of compensation should be increased. Accordingly, in supersession of former orders, the following should be the ordinary rule, leaving the Collectors discretion to deal specially with special cases. All holders under the Survey Settlement for more than five years, but less than ten years, to receive five years' purchase. For more than ten, but less than fifteen years, to receive ten years' purchase. Holders for upwards of fifteen years to receive fifteen years' purchase, the same as will in future be offered to Mirásdárs. (G. R. No. 2280, dated 23rd June 1860.)

3. (1) As regards the reduction of the judi in cases in which inám lands other than service inám lands are taken up or acquired for a public purpose, the following principles should be adopted:—

(*a*) The Inámdár is owner of the entire profits of the land taken up, except the judi. If he receives compensation equal to the capitalized entire profits, he is entitled to no reduction of the judi thereon.

(*b*) If he receives compensation equal to the capitalized profits less the judi thereon, he is entitled to a reduction equal to the judi thereon.

(*c*) If he gives up the land without compensation he is no longer liable for the judi thereon, and is entitled to a reduction equal to the judi thereon.

(*d*) In the cases of (*b*) and (*c*), Government would have a claim to receive the judi on the land or its capitalized value from the party to whom the land is transferred.

(*e*) In any case, Government should clearly not be mulcted in the portion of the assessment which they did not receive and which belonged to the Inámdár.

(2). The case of service lands is different. There the assessment is what Government allowed to the holder in return for service, and it reverts to Government when he relinquishes the land. (G. R. No. 4547, dated 6th June 1885.)

PART VIII.—INTERPRETATIONS AND LEGAL OPINIONS.

1. The following opinion of the Advocate General, Calcutta, dated 11th December 1867, which was passed when Act VI of 1857 was in force, was forwarded to all Collectors and Commissioners for information :—

"It is quite settled with regard to the compulsory taking of land by Railway Companies at Home that the service of the notice constitutes a binding contract. It is equally clear that, under the Indian Act, Government cannot decline to take the land after the Collector has made an award or directed a reference; the reason being (as I take it) that as soon as the award is made, or reference directed, all voluntary agreement between the parties as to the terms of purchase is at an end. Whether the earlier date, *i. e.*, that of the issue of the declaration under Section 2, is that at which Government must be considered to become conclusively bound, is a point on which, notwithstanding the English cases, I have long entertained great doubt.

"The conclusion, however, to which I have come is that the taking of the land becomes compulsory on the issue of the declaration. I do not think Section 5 could be construed to mean that after the Collector on the one side, and the owner on the other, had agreed to a price (an agreement by which the owner would certainly be bound) the Collector could rescind the agreement; at any rate, if he could, it would only be in order that the price should be settled by arbitration. And if Government are under the 5th Section bound to do one thing or the other, they must be so bound by something precedent, which can only be the issue of the declaration."

(G. I., H. D., No. 1571, dated 19th December 1867; *vide* G. R. No. 71, dated 8th January 1868.)

2. A perusal of Sections 8 and 9 of the Land Acquisition Act shows clearly that its provisions are intended to apply to land of which the persons entitled thereto are in possession. The Legislature did not contemplate that any Department of Government would enter upon land unauthorizedly and retain possession as a trespasser; and then afterwards seek to acquire a legal title thereto; and the Act, of course, makes no provision for such a case. Nevertheless there is no legal objection to measures being subsequently taken for acquiring such land under the Act. If it is possible, it would be expedient that possession should be restored to the rightful holders before such measures are set on foot, but this is not indispensable. In any case the acquisition will count only from the date on which the Collector lawfully takes possession under Section 16 or 17 of the Act. The Act does not empower the Collector or other officer when making an award of compensation under it to settle damages for trespass previous to the legal acquisition of the land. For this, unless the Collector and the parties can come to terms separately, an action will lie against Government. (L. R. No. 1018, dated 30th July 1883; *vide* G. Rs. Nos. 5879, dated 8th August 1883, and 441 dated 17th January 1884.)

3. Copies of the following report of the Legal Remembrancer were circulated to the Commissioner in Sind, the Commissioners of Divisions, and the

Collectors for information with reference to the opinions of that officer (No. 1018 of 1883) given above :—

"From the 2nd paragraph of the Legal Remembrancer's memorandum No. 1018 of the 30th July 1883, it appears that the Hon'ble Mr. Naylor held that under certain circumstances a good title could be secured to Government under the Land Acquisition Act notwithstanding the previous illegal occupation of land by Government.

"2. In the present case there is nothing to show that Government ever took possession illegally of the land in dispute at present occupied by the P... market. It seems merely to have assigned its interest, such as it might be, to the Municipality, and that body took possession and built on the ground without regard to the rights of T. M. Under these circumstances, as the land is not in the possession of Government at present, I can see no legal objection in the wording of the Land Acquisition Act to its acquisition for a public purpose notwithstanding that purpose may be its use by the Municipality as a market.

"3. Although the Municipality has heretofore been in occupation of the land as a trespasser, it seems to me competent to Government, if it thinks fit, now to remedy the defect of title by taking up the land for its use in the manner proposed, subject, of course, to the payment by it of such compensation as may be awarded to T. M. or any other claimant. Had Government itself been the trespasser, possibly the case might have been different, but this is a point on which I need express no opinion as it does not arise."

(L. R. No. 1585, dated 15th December 1887; *vide* G. R. No. 223, dated 11th January 1888.)

4. The following opinion was recorded by the Remembrancer of Legal Affairs on the question whether a reference under the Land Acquisition Act can be made after possession has been taken :—

"(1) No definite ruling of any authority can be obtained on the subject without a judicial decision. Any opinion I might form on the subject would be unsafe as a guide for future action, and the only value of my remarks could have would be that of arguments which might be submitted to the consideration of the Courts.

"(2) It is unquestionably irregular and illegal to take possession, in the absence of an agreement, before reference to the Courts, unless a direction to do so has been given by Government under Section 17 of the Act. Possession so taken would be mere trespass, and Section 16 would not operate to vest the land so improperly taken, in Government.

"(3) But as the land does not vest in Government, and the title of the prior owner still subsists, it might still be argued that it is open to Government to acquire it, although by title thus subsequently acquired, Government could not validate the action previously taken or avoid liability for damages for the misfeasance or trespass up to the date of acquisition.

"(4) The possession previously taken is, it might be urged, a mere nullity so far as the rights of Government are concerned, and no acquisition has been made. The land is in the possession of the Collector, but has not vested in Government. It is therefore still open to Government to acquire it. The illegal act of the Collector or other officer does not deprive Government of this power, but only gives rise to a liability in respect of the previous illegal occupation.

"(5) As I have already observed, however, this is a matter for the Courts to decide, and all I can do is to suggest arguments and not to submit a course of action to be relied on as curing irregularities in procedure.

"(6) I think the opinions attached to Government Resolution No. 223 of 11th January 1888 and No. 441 of 17th January 1884, are not irreconcileable with the position I have suggested. Government cannot convert by subsequent acquisition the past illegal occupation of their officers into a legal holding. But not having acquired, I think it is still open to them to acquire under the Act. And as immediate possession in the instance under reference is necessary, I think an order under Section 17 directing the Collector to take such possession is advisable.

"(7) It is not stated in the papers whether any declaration has yet issued under Section 6. Apparently it has not. I think that might now be done, and the reference to the Court made in due form.

"(8) The liability for damages in respect of the previous illegal occupation would still subsist, but I think they would be assessed at a very inconsiderable sum, as no serious injury can be sustained by the occupation if the acquisition is legally completed."

(L. R. No. 923, dated 27th July 1889; *vide* G. R. No. 5707, dated 6th August 1889.)

5. Section 17* of Act X of 1870 authorizes the Collector, if so directed by Government, to take possession before reference or award of (1) *waste* or (2) *arable* land *only*. The attention of Collectors is drawn to this limitation which should not be overlooked. (G. R. No. 2902, dated 28th April 1890.)

* Cf. Section 17 (1) of Act I of 1894.

6. Section 17 of the Land Acquisition Act was intended to limit the power of Government to direct the taking of immediate possession to the cases of lands which were either wholly unoccupied (waste) or else capable of being used for cultivation only (arable). *Expressio unius est exclusio alterius*, and the Legislature evidently contemplated that no summary dispossession should be allowed when there were buildings used as dwellings or for the custody of property. It was clearly thought undesirable that people should be turned out of their houses or have their goods disturbed without notice sufficient to give them time to obtain other accommodation. (L. R. No. 646, dated 7th June 1890; *vide* G. R. No. 4112, dated 12th idem.)

7. It is not optional with Government or with the officer appointed to acquire land for a canal to proceed under the Irrigation Act, when the Land Acquisition Act is the enactment properly applicable. The Irrigation Act provides only for the award of compensation "in respect of any substantial damage caused by the exercise of any of the powers conferred by that Act" (*vide* Section 31); and Sections 38 and 39 apply to all *such* claims for compensation, excepting claims of the nature specially provided for in Sections 34 and 35. The acquisition of land for canal purposes is not made in the exercise of any power conferred by the Irrigation Act. (L. R. No. 590, dated 5th May 1883; *vide* G. R. No. 4105, dated 30th idem.)

8. The declaration required by the Land Acquisition Act cannot properly be made with reference to any lands which it is intended to reconvey to

individual persons for the erection of buildings for private occupation, as this use does not come under the definition of a public purpose. The language of the Act is wide, but its provisions authorize only the taking up of lands which it is intended afterwards to set apart for the use of the public. (G. R. No. 2337, dated 12th June 1869.)*

9. The Land Acquisition Act cannot be used to acquire land for private residences. (G. Rs. Nos. 8202, dated 17th October 1884, and 5531, dated 8th July 1885.)*

†Sec. 49 of Act I of 1894.

10. When the owner of property makes known his desire under Section 55† of the Land Acquisition Act, 1870, there ought to be a fresh notification under Section 6 concerning the entire property, if Government determine to take up the whole. The words of Section 55 are "the provisions of this Act shall not be put in force for the purpose, &c.," and the issue of a notification under Section 6 is one of the provisions of the Act. (L. R. No. 478, dated 13th April 1886; *vide* G. R. No. 3508, dated 14th May 1886.)

11. A person who, when land is being acquired under the Land Acquisition Act, says that the land is his, but puts in no claim for compensation for it, surrenders any right he may have in the land and is no longer 'a person making a claim in respect thereof.' The Collector, without deciding upon the merits of such person's alleged title, should proceed with the enquiry as if that person had not appeared at all. (L. R. No. 1169, dated 7th September 1886; *vide* G. R. No. 6971, dated 30th idem.)

12. (1). All property is held subject to the general laws of the State, and a contract cannot set them aside. The power vested in the State of compulsory acquisition of land for public purposes, is part of the right known to American jurists as "Eminent Domain," which Wharton defines in his Law Lexicon as "the right which a Government retains over the estates of individuals to resume them for public use" (*vide* also Brice on *Ultra Vires*, *passim*). The Legislature does not exempt any tenure whatsoever from this liability to resumption on compensation given which is a liability necessarily incident to all tenures in all civilized societies.

(2). The case of *Baily* v. *De Crespigny* (4 L. R., Q. B., 180) shows that a power conferred by the Legislature for compulsory acquisition is to be regarded as a "*vis major*" dispensing with the specific performance of contracts which it renders impossible of performance. (L. R. No. 1235, dated 23rd September 1889; *vide* G. R. No. 7230, dated 26th idem.)

13. (1). Payment of compensation for lands taken up under the Land Acquisition Act is not considera-

* These orders were passed when Act X of 1870 was in force. In Section 3 (*f*) the expression "public purpose" is defined to include the provision of village-sites in districts in which the Local Government shall have declared by notification that it is customary for Government to make such provision.

tion on account of the creation, declaration, assignment, limitation or extinction of a right, title or interest. The payee's right, title and interest are extinguished by the operation of the law, and the payment is not consideration for the extinction of title, but compensation fixed by an award for losses of various kinds sustained in consequence of the compulsory acquisition. The title is extinguished or assigned, not because of the payment received, but because of the exercise of statutory powers. A receipt on payment, if taken, would, without registration, be evidence admissible to prove the satisfaction of all claims between the parties, and the actual payment of money is a fact always susceptible of proof by oral evidence without production of a written or registered acknowledgment. No document or registration therefore is necessary.

I. L. R., 4 B., 235.
Do. 5 B., 181.
Do. 2 B., 489.
7 M. H. C. R., 1.

(2). The award evidences the *amount* of compensation. The title is extinguished on the making of the award or reference to the Court (if all the preliminary conditions have been observed). The payment of the money not being the ground on which the title has vested in Government, no acknowledgment of its receipt requires registration.

(L. R. No. 1183, dated 12th September 1889; *vide* G. R. No. 9767, dated 24th December 1889.)

14. Section* 56 of the Land Acquisition Act (X of 1870) puts Municipalities and Companies upon an equality in the matter of charges, and Municipalities can be fairly charged with the pay of surveyors employed in measuring lands acquired for municipal purposes under the Land Acquisition Act. (G. R. No. 9009, dated 17th December 1890.)

* *Vide* Section 50 (1) of Act I of 1894.

15. (1). A distinction is to be drawn between lands acquired by amicable contract and lands taken by compulsory powers.

(2). The ownership of lands obtained by private contract for the general purposes of an undertaking depends entirely upon the contract entered into or the conveyance made so far, that is, as the grantor is concerned. But the Municipality hold all property of whatever nature or kind soever which may become vested in them as trustees for the purposes of the Act (Section 17, Bombay VI of 1873), and would be precluded from giving it away in such a manner as to deprive the interests committed to their charge of all benefit therefrom.

Brice, *Ultra Vires*, page 110.

(3). The sanction of the Commissioner would be necessary to the validity of any alienation for a term exceeding seven years, made subsequent to the coming into force of Bombay Act II of 1884.

(4). But if the transfer by the Municipality took place before such sanction was necessary or after it was obtained, then the sale rent-free of the land so acquired, if it were surplus land not required for

the special purposes of the Municipality, would not be open to objection. For corporations, though they can acquire lands only in such amounts as may reasonably be required for carrying out the object of their creation, may, if they have *bonâ-fide* acquired too much, utilize the surplus by sale or lease in the way most advantageous to the corporate interests, and the proceedings of corporations for public purposes in this respect will be scanned much less strictly than in the case of corporations acquiring for their own special benefit.

Brice, *Ultra Vires*, page 108.

Brice, *Ultra Vires*, page 109.

(5). It does not necessarily follow that to capitalize rental in an out and out sale would be less advantageous to the Municipality than to reserve a uniform rent.

(6). The value of the exemption would in such case probably enter into the price realized.

(7). But with lands acquired by compulsory powers conferred by statute the case seems to be somewhat different. Brice says: "If lands be taken compulsorily, the rights as to ownership of the corporation and of the other parties will depend upon the conveyance and the Acts of Parliament giving the compulsory powers read together."

Ultra Vires, page 110.

(8). The Land Acquisition Act contemplates the exercise of compulsory powers of acquisition for public purposes only. It is, therefore, *ultra vires* for a Municipality to devote to the private uses of individuals land acquired compulsorily for public purposes.

(9). In the case noted in the margin, Pollock, C.B., speaking of a Parliamentary corporation, said: "It is a corporation merely for the purposes for which it is established by Act of Parliament, and it has no existence for any other purpose. Whatever is done beyond that purpose is *ultra vires* and void," and Channell, B., said: "The corportion was called into existence for a particular purpose and had no capacity to take or make a grant for all purposes."

The National Manure Company v. *Donald*, 28 L. J. Exch., 185.

(10). But the Courts will put a reasonable and business-like construction upon the term "purposes" and therefore they will not interfere to restrain a corporation from dealing with its lands unless it is clearly shown to be inconsistent with the conditions for and upon which they were acquired.

Brice on *Ultra Vires*, page 116.

(11). No corporation may use its compulsory powers for any purposes whatever other than those expressly set forth in its constating instruments or necessarily deducible therefrom, but "a corporation carefully and *bonâ fide* exercising its privileges is not liable for damage arising thereby.

Brice on *Ultra Vires*, page 500.

(12). The constating instruments in the case of a Municipality acquiring land compulsorily are of course the Bombay District Municipal Acts (Bombay VI of 1873 and II of 1884) and the Land Acquisition Act, and under these Acts the powers are conferred for public purposes and more especially for the public health, convenience and safety of the residents in the municipal area. It would therefore, I submit, be improper and illegal for a Municipality to invest Municipal Funds in the purchase of house sites with a view to speculative profits on resale. But if a Municipality had by *bonâ fide* miscalculation acquired more land than it required for public or municipal purposes, there would be no objection to its disposing of the surplus with the proper sanction for the general benefit of the Municipal Funds. It seems that a wide and liberal construction will be put upon the powers vested in bodies such as Local Government Boards, Municipal Corporations, &c., whose duties are the accomplishment of public improvements. * * * In order to avoid taxing the public there may well be permission granted to a corporation to take more land than is actually necessary for the purpose of making certain specified improvements, and by a sale of the superfluous land rendered more valuable by the improvements themselves, to raise funds for the execution of a great public work. This may be admitted, but it only amounts to this, that bodies entrusted with powers for the public benefit will, like persons having analogous powers for their own advantage, under ordinary circumstances, be deemed the proper and only judges of the best method of utilizing such powers for the end designed.

Brice, *Ultra Vires*, page 517.

(13). In *Galloway* v. *Mayor and Commonalty of London* (1 H. of L. 34) the Lord Chancellor Lord Cranworth said: "The principle is this, that when persons embarking in great undertakings, for the accomplishment of which those engaged in them have received authority from the Legislature to take compulsorily the lands of others, making to the latter proper compensation, the persons so authorized cannot be allowed to exercise the powers conferred on them for any collateral object, that is, for any purposes except those for which the Legislature has invested them with extraordinary powers." "The Courts should prevent them, when the Legislature has given them power to interfere with private property for one purpose, from using that power for another." But further on Lord Cranworth drew a distinction between the case of a corporation for profit, such as a Railway Company, "when the Legislature has no concern with the question as to how the persons embarking in the undertaking are to obtain funds to pay for the construction of the Railway," and the case of a Municipal Corporation undertaking improvements. As to the latter case he observed: "When they have made a new or widened an old street, they will necessarily have incurred a very great expense for which they can

get no return. The new or improved street is dedicated to the public and, unlike the Railway, yields no profit to those by whom it has been made," and "to meet this difficulty" the words of the Legislature were liberally construed as impliedly authorizing the taking of more land than might be absolutely necessary to effect the desired improvements, and as enabling "corporations to reimburse themselves" by sale of the surplus property increased in value by the improvements made.

(14). The doctrine of *ultra vires* supposes that a corporation acquires property for its own use, neither more nor less than it needs, with the intention of utilizing the same by its own agents, and that it does not *ab initio* propose to transfer such property to others. But "a corporation may temporarily let off or transfer to third parties such part of its estates or assets as it is unable, from special circumstances, to make an immediate advantageous use of," and may sell such surplus property or utilize it otherwise for any purpose not outside its powers unless expressly restricted therefrom.

Brice, *Ultra Vires*, 133.

Brice, *Ultra Vires*, 143.

Brice, *Ultra Vires*, 145.

(15). A Municipality cannot sell land vested in it without sanction from the Commissioner (Section 15, Bombay II, 1884). If that sanction be accorded, there is no restriction in the Acts to prevent them from making the transfer rent-free.

(16). That in ordinary cases of land belonging to Government the sanction of the Government of India is necessary to a rent-free transfer in perpetuity, does not appear to me to affect the rights or powers of a Municipality to deal with their surplus lands in the way that is really most beneficial for the interests of the Municipality. That rule refers only to land which is at the disposal of Government and which is not the property of individuals or of aggregates of persons legally capable of holding property, and is not a restriction operating on the powers of such individuals or such aggregates over property vested in them.

(17). It is of course, however, the duty of the Municipality in such transactions to have due regard to the permanent interests of the Municipal Fund. But if they do not neglect that duty, and if by an out and out sale they can realize as much as by a lease reserving a yearly rent, it does not appear that anything beyond the necessary sanction of the Commissioner would be wanting to validate such transfer.

(L. R. No. 468, dated 3rd April 1891; *vide* G. R. No. 2727, dated 20th idem.)

16. The following legal opinions were communicated by Government to all Collectors and Commissioners for information :—

"With reference to the acquisition proposed in the accompaniments to Government memorandum No. 9027 of 17th

December 1890, I have the honour to submit my opinion as follows.

"(2). I think there is no objection to the acquisition by Government of land which has merely been assigned as a wage fund from which the performance of certain religious services may be remunerated, if other adequate provision is made for such remuneration.

"(3). The power of Government would no doubt be open to question to make such acquisition if the *land itself* had been dedicated to religious uses, as for instance, if it had become *wakf* by conversion into a graveyard, or as the site or precincts of a mosque, in respect of which as *res religiosæ*, or *res sacræ*, the right of the State to exercise its power of eminent domain might be held to be excluded.

3 B. H. C., P. J. for 1887 and 2 Borrodaile's Reports, page 74'.

"(4). But when land is held merely as a source from which services are to be compensated, the dedication to religious uses extends virtually to the marketable value of the property only, and if on the requisition of the State that is replaced in another form, so as to fulfil the purposes of the trust on which it was held, I do not think the principle which renders religious endowments inalienable would be infringed.

I. L. R., 5 B., 393.

"(5). I am, however, unable to find any authorities on the point, and if Government consider it open to doubt and of sufficient importance, the opinion of the Advocate General might perhaps be taken.

"(6). The land in question has probably been held on a tenure of successive life estates and the corpus of the compensation, whatever form it may take, should, I think, be secured as the Collector suggests from alienation by incumbents for the time being.

"(7). If there is any objection to the permanent alienation of the land in question, I would submit that it might be acquired temporarily under Section 43 * of Act X of 1870. Bombay Act VI of 1873, Section 23, contemplates the temporary as well as permanent acquisition of land by Government on behalf of a municipality. There can be no doubt as to the power of the holder to alienate his own interest in the land which furnishes his remuneration, and the three years for which temporary acquisition may be made under Section 43 of Act X of 1870 is not likely to exceed the holder's life interest.

* Cf. Section 35 of Act I of 1894.

I. L. R., 6 B., 596.

"(8). It might be advisable to insert in the notification after the words 'Abu Ahmed Mawlávi Yar Mahomed' some such words as the following 'as the source from which the religious services to be performed by him are remunerated'."

(L. R. No. 1902, dated 31st December 1890.)

"With reference to memorandum No. 369 of 1891 of the Revenue Department, dated January 16th, 1891, and desiring my opinion as to the acquisition by Government under Act X of 1870 of land at Dhulia said to have been appropriated or assigned for the remuneration of certain Mahomedan religious services, I am of opinion as follows:—

"(2). I see no reason whatever to doubt the authority of Government to acquire this land under Act X of 1870, whether it has been merely appropriated or assigned for such remuneration, or has actually become wakf or religious property. I am unable to concur in the view expressed by the Acting Legal Remembrancer in his letter No. 1902 of 1890, paragraph 3, that the right of the State to acquire the latter class of land may be held to be excluded. I know of no exception to the authority of Government to acquire land under Act X of 1870 whether or not such land be alienable or inalienable as between private persons; nor do I see why the doctrine of 'eminent domain' (which it is not necessary to resort to) should

not apply to property so inalienable; *vide* Vattel's Law of Nations (1834), page 111. Practically this doctrine has in modern times been superseded by Statutory enactments. In England churchyards have been not unfrequently acquired under the Land Clauses Act and similar statutes, *vide Hilcoat* v. *the Archbishops of Canterbury and York*, 10 C. B. 327, and *Stebbing* v. *Metropolitan Board of Works*, 6 L. R. Q. B., 37.

"(3). No doubt it will be incumbent on those charged with the acquisition of such land to take due care that the purchase money be duly applied for the purposes to which the land to be acquired was itself devoted."

(Adv. Gen. No. 8, dated 19th January 1891; G. R. No. 2933, dated 29th April 1891.)